

Last Revision: 12/01/03

ORDINANCE NO. 03-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10, LAND DEVELOPMENT CODE, OF THE LEON COUNTY CODE OF LAWS TO PROVIDE FOR PROTECTION OF CULTURAL RESOURCES IN THE ENVIRONMENTAL MANAGEMENT ACT (EMA); AMENDING DEFINITIONS IN SECTION 10-1; ADDING A NEW SECTION 10-194, CULTURAL RESOURCES; AMENDING SECTION 10-346, PRE-DEVELOPMENT REVIEWS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

Section 1. Portions of the Table of Contents of Chapter 10 of the Code of Laws of Leon County, Florida, are hereby amended as follows:

Chapter 10
LAND DEVELOPMENT CODE*

Article VII. Environmental Management
Division 2. Stormwater Management
Subdivision I. General Provisions

Sec. 10-193. Interim lake/waterbody protection zones.

Sec. 10-194. Cultural resources.

~~Secs. 10-194~~ 10-195-10-205. Reserved

Section 2. Portions of Section 10-1, "Definitions", of Chapter 10 of the Code of Laws of Leon County, Florida, are hereby amended as follows:

Sec. 10-1. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Conservation area shall mean an area which requires special considerations and strict application of performance standards for development due to significant environmental constraints, as identified pursuant to environmental overlay provisions in the comprehensive plan's land use element. The conservation category includes ~~degraded~~ altered floodplains, altered floodways, altered watercourses, altered wetlands, closed basins, significant grade areas (ten to 20 percent), high quality successional forests, karst features, and designated canopy roads, and cultural resources.

Cultural resource shall mean a site, object, structure, building, or district deemed to be of local, regional, or national significance as regards its architectural, historic, archaeological, engineering, or cultural

1 value. Cultural resources can include: archaeological sites; historic resources; locally designated historic
2 resources; prehistoric or historic districts, sites, buildings, structures, and objects included in, or eligible for
3 inclusion in, the National Register of Historic Places and those listed in the local register of historic places;
4 sites and properties listed in the Florida Master Site File; National Historic Landmarks; human burial sites
5 and human skeletal remains.
6
7

8 **Section 3.** Article VII, entitled "Environmental Management" of Chapter 10 of the Code of Laws of Leon
9 County, Florida, is hereby amended by adding a new section, 10-194 "Cultural Resources", which section
10 shall read as follows:
11

12 **ARTICLE VII. ENVIRONMENTAL MANAGEMENT**

13 **Sec. 10-194. Cultural Resources.**

14
15
16 It is the intent of this section to provide for the protection and preservation of significant cultural
17 resources and to provide for mitigation of adverse impacts to such resources.
18

19 (a) *Significant cultural resources.* Significant cultural resources shall include: sites, buildings, districts,
20 structures, and objects included in, or determined to be eligible for inclusion in, the National Register of
21 Historic Places; National Historic Landmarks; archaeological or historic sites, buildings, districts, structures,
22 and objects identified as significant archaeological or historic sites in the comprehensive plan or so
23 designated by the Tallahassee Trust for Historic Preservation or its successor; buildings, structures, sites,
24 objects and districts listed on the local register of historic places pursuant to sections 10-1003 and 10-
25 1004, and; human burial sites. Significant cultural resources can also include those cultural resources that
26 the County Administrator or designee determines to be significant during the subdivision or site and
27 development plan review process, environmental review process, environmental permitting process, or
28 subsequent to initiation of site development activities. In determining the significance of cultural resources,
29 the County Administrator or designee shall seek guidance from appropriate authorities which may include
30 the Florida Department of State's Division of Historical Resources (DHR), the State Historic Preservation
31 Officer (SHPO), the Architectural Review Board (ARB), and the Historic Preservation Officer (HPO)
32 designated by the Tallahassee Trust for Historic Preservation or its successor. The criteria to be applied in
33 determining significance shall be based on those criteria used to determine eligibility for listing in the
34 National Register of Historic Places (Code of Federal Regulations Title 36, Part 60, as amended) or those
35 criteria set forth in section 10-1004.
36

37 (b) *Disturbance of cultural resources.* Development and other activities that could result in the
38 disturbance of significant cultural resources is prohibited unless otherwise authorized by the County
39 Administrator or designee. As regards human burials, prohibited acts shall be those identified as constituting
40 unlawful activities in Sections 872.02 and 872.05 of the Florida Statutes. Such acts include, but are not
41 limited to, destruction or removal of gravestones, vandalizing or injuring tombs and burial sites, and
42 disturbing or damaging an unmarked human burial. The prohibition against disturbing human burials
43 addressed herein shall not apply to any person acting under the direction or authority of the Division of
44 Historical Resources of the Department of State, to cemeteries operating under Chapter 497 Florida Statutes,
45 or any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial
46 mound, or similar structure, or its contents or to any person otherwise authorized by law to disturb, destroy,

1 or remove an unmarked human burial. The prohibition against disturbing other types of significant cultural
2 resources shall not apply to activities performed by educational institutions or to activities performed by or
3 under the direction of a certified archaeologist during the normal course of investigating, documenting,
4 preserving, or restoring such resources.

5
6 (c) *Cultural resource protection plan.* Any application for subdivision approval, application for site
7 and development plan approval, application for conceptual or final PUD approval, or application for an
8 environmental management permit that involves property containing an identified significant cultural
9 resource or that involves property that may potentially contain a significant cultural resource shall include
10 a plan for the protection of the resource. Prior to engaging in any development activity, and prior to
11 removing, damaging, or destroying any significant cultural resource, the person proposing to engage in such
12 activity and the owner of the land on which such activity is proposed shall first apply for and obtain an
13 environmental management permit that includes a plan for the protection of the resource. Proposed cultural
14 resource protection plans shall demonstrate to the satisfaction of the County Administrator or designee that
15 the plan will provide adequate protection of the resource. In most cases a cultural resource protection plan
16 will involve either the preservation and protection of the resource by means of a conservation easement, a
17 mitigation program whereby unavoidable impacts to the resource are minimized and mitigated, or further
18 investigations during site development coupled with measures to protect significant cultural resources if
19 discovered. These potential types of cultural resource protection plans are addressed in the following
20 subsections:

- 21
22 (1) *Protection by conservation easement.* A conservation easement, or other suitable means of
23 protection, in a form approved by the county attorney may be required for all on-site areas which
24 contain significant cultural resources to ensure such areas will be protected and preserved.
25 Conservation easements shall be dedicated in favor of the county and the easements shall
26 encompass the cultural resources present plus a buffer if required. The determination of the
27 required buffer, if any, shall be made by the County Administrator or designee in consultation with
28 appropriate authorities such as the DHR, SHPO, ARB, or HPO. A conservation easement shall be
29 required to insure the on-site protection of areas containing human burials unless: the area is a
30 cemetery operating under Chapter 497 Florida Statutes, or: a cultural resource protection plan
31 approved by the County Administrator or designee provides for the relocation of the human
32 remains to an active cemetery duly licensed by the state, relocation to another on-site or off-site
33 location, or relocation to another acceptable repository. The relocation and subsequent interment
34 of human remains at an on-site or off-site location other than a licensed cemetery shall require the
35 establishment of a conservation easement encumbering the relocation site. Nothing contained in
36 a conservation easement established to protect areas containing human burials shall act to prohibit
37 any person so entitled from exercising any rights secured by Section 704.08 Florida Statutes or any
38 rights secured by the Native American Graves Protection and Repatriation Act of 1990.

- 39
40 a. *Ingress/egress easement required.* Any development or subdivision project that involves
41 establishment of a conservation easement to protect areas containing human burials shall also
42 provide an ingress/egress easement by which relatives and descendants of the deceased can
43 legally access the conservation easement area for purposes of visiting the area at reasonable
44 times and in a reasonable manner. The ingress/egress easement shall extend from the
45 conservation easement area to an existing public right-of-way or existing public access
46 easement. Such an ingress/egress easement shall not be required if the conservation easement

1 adjoins an existing public right-of-way or public access easement. An ingress/egress
2 easement may also be required in association with conservation easements established to
3 protect other types of significant cultural resources. The necessity for providing such an
4 access easement shall be determined by the County Administrator or designee based upon
5 the significance and value of the cultural resources involved and the need for the public to
6 have access to these resources for visitation or research purposes.

7
8 b. *Management and maintenance requirements.* When preservation and protection of significant
9 cultural resources is proposed through establishment of a conservation easement or similar
10 protective mechanisms, the County Administrator or designee may also require the cultural
11 resource protection plan to include provisions for the long-term management and maintenance
12 of the cultural resources involved if such actions are deemed necessary to protect and preserve
13 the integrity of these resources.

14
15 (2) *Protection through mitigation.* If practicable project alternatives do not exist to avoid adverse
16 effects to significant or potentially significant cultural resources, the cultural resource protection
17 plan shall specify measures to minimize the adverse effects and to mitigate for the unavoidable
18 effects. For purposes of this section, a "practicable" project alternative is one that does not cause
19 an unreasonable and undue hardship on the use of the property, considering the significance and
20 condition of the cultural resource. Mitigation measures shall be designed to preserve, reclaim, and
21 compensate for as many of the values of the significant cultural resource as are adversely affected.
22 Depending on the cultural resources involved, such mitigation measures may include, but are not
23 necessarily limited to, data recovery, archaeological excavation, the recovery, analysis and
24 documentation of features, archival studies, and other measures to assure preservation of
25 significant elements of the resources disturbed, such as voluntary transfer to a public or nonprofit
26 agency for curation purposes. All cultural resource protection plans involving mitigation require
27 the preparation of a research design report and final report. These reports shall not be deemed
28 complete until they are approved by the County Administrator or designee.

29
30 (3) *Protection through further investigations.* In some instances, appropriate investigations may be
31 performed to ascertain the presence of cultural resources on a proposed development site and these
32 investigations may conclude that the presence of significant cultural resources is unlikely. Despite
33 these results, there may be cases where the County Administrator or designee determines that there
34 remains a reasonable probability that such resources may be present and that the proposed
35 development could adversely impact these resources. A cultural resource protection plan shall be
36 required in such cases. This plan shall provide for further investigation of any suspect areas during
37 the initial stages of site development. It shall also provide a course of action to ensure adequate
38 protection of significant cultural resources should they be discovered, as addressed in the preceding
39 subsections.

40
41 (d) *Fortuitous finds and unmarked human burials.* The following requirements apply to all site
42 development activities:

43
44 (1) *If previously unidentified cultural resources are discovered or observed at development sites or*
45 *during development activities following permit issuance, then project activities affecting those*
46 *resources shall cease immediately. The developer, property owner, contractor, or agent thereof*

shall notify the County Administrator or designee and the Division of Historic Resources within two working days of the discovery. The County Administrator or designee shall require an investigation be performed to assess the significance of the resources in accordance with subsection 10-194(a). If the County Administrator or designee determines the cultural resources are significant, development activities in the area containing these resources shall not be resumed until such time that a cultural resource protection plan has been submitted to and approved by the County Administrator or designee. The approved protection plan may restrict further development in the area containing the identified resources. If the County Administrator or designee determines the resources are not significant, development activities may continue upon written notification issued by the County Administrator or designee.

(2) If any unmarked human burial is discovered or observed at development sites or during development activities following permit issuance, all activity that may disturb the burial site shall cease immediately. The developer, property owner, permittee, contractor, or agent thereof shall immediately notify the nearest law enforcement office and shall follow the notification procedures set forth in Section 872.05 Florida Statutes. In addition, the County Administrator or designee shall be notified within two working days of the discovery. Development activities in the area containing unmarked human burials shall not be resumed until such time that a cultural resource protection plan has been submitted to and approved by the County Administrator or designee. The approved plan may prohibit further development in the burial site area. As used in this subsection, "unmarked human burial" shall have the same meaning as defined in Section 872.05 Florida Statutes.

(3) In cases where previously unidentified cultural resources are discovered or an unmarked human burial is discovered, the County Administrator or designee shall expedite the County's final resolution of the matter in an effort to minimize the interruption or delay of lawful development activities affected by such discoveries.

Secs. ~~10-194~~ 10-195–10-205. Reserved.

Section 4. Section 10-346, "Pre-Development Reviews", of Chapter 10 of the Code of Laws of Leon County, Florida, is hereby amended as follows:

Sec. 10-346. Pre-Development Reviews.

(a) Every application for standard form permit, for subdivision approval, for conceptual or final PUD approval, for approval of any project which includes 40 percent or more area of the proposed site located in a conservation or preservation overlay district, for every required application for site and development plan approval, for all roadway projects on new locations, and all widening of existing roadways, shall be accompanied by an environmental analysis which shall become, upon approval, a part of the final development approval. The environmental analysis shall include the following components:

Sec. 10-346(a)(1) no changes

(2) *Standards for the Protection of Natural Features.* If an application contains one or more of the

preservation/conservation areas listed in subsection (1) above, the applicant shall propose measures to mitigate the adverse affects of the development on such areas, using as a minimum, the standards and guidelines set forth below. Details of the proposed mitigation for on-site preservation /conservation areas must be supplied with the environmental impact analysis application.

Sec. 10-346(a)(2)a. unchanged

b. *Conservation areas.* Development activity is permitted within conservation areas provided that it is specified in the document establishing the conservation area and is consistent with the following criteria:

1. *Degraded Altered wetlands.* In cases where a wetland has been considered degraded in accordance with Sec. 10-187, then it may be classified as an altered wetland and some development activity may be permitted as outlined in section 10-187(c) and section 10-187(f).
2. *Altered floodplains.* Development is allowed within altered floodplains provided that no floodway is adversely affected, compensating volume is provided for any net fill within the floodplain, and the lowest floor elevation of any structure is placed at or above the flood protection elevation.
3. *Altered floodways.* Development shall not be allowed in areas designated as floodways, as defined in section 10-1. However, public sector infrastructure projects shall be allowed if it can be shown by certified technical methods, approved by the director, that the development activity will not cause an increase in the 100-year floodplain profile. For floodways not designated as FEMA floodways, it shall be demonstrated that all activities associated within the development shall not increase the 100-year floodplain elevation by more than one foot.
4. *Altered watercourses.* Development is allowed within altered watercourses pursuant to meeting other Code sections if compensating volume is provided for any net fill within the watercourse, and the lowest floor elevation of any structure is placed at or above the flood protection elevation.
5. *High quality successional forest.* Development activity is not allowed within areas designated as high quality successional forest. However, if the entire parcel under review is considered high quality successional forest, then the site may be developed at 4,000 square feet of disturbance per two acres, up to a maximum of 20% of the entire parcel. Those areas designated to be preserved shall be placed in a conservation easement.
6. *Significant grade area.* Fifty percent of the total grade area or fifty percent of each individual grade area must be left natural and shall be placed into a conservation easement. This requirement may be met by preserving 50% of each individual area or fifty percent of the total grade areas, whichever most effectively provides downhill buffers, protects forested areas, or buffers other protected conservation or preservation

1 areas.

2
3 7. *Closed basins.* Development activity within closed basins must meet the standard
4 outlined in section 10-188.

5
6 8. ~~*Archaeological and historical sites.*~~ *Cultural resources.* ~~All identified archaeological~~
7 ~~and historical sites must be protected in accordance with the recommendations of the~~
8 ~~Compliance Review Division of the Bureau of Historic Preservation of the Florida~~
9 ~~Department of State. Significant cultural resources shall be protected in accordance with~~
10 ~~section 10-194. A cultural resource protection plan is required for areas containing~~
11 ~~identified significant cultural resources. This plan may require a conservation easement~~
12 ~~encompassing the cultural resources, provision of public access to the cultural resource~~
13 ~~site, or other measures to protect, maintain, and manage the resource or to mitigate for~~
14 ~~impacts to the resource.~~

15
16 c. *Table of Standards for the Protection of Natural Features* is included herein as Table 1. If an
17 application includes land on which one or more of the natural features listed within the table
18 is present, the applicant shall propose measures to mitigate the adverse effects of the
19 development on such constraints, using as a minimum the mitigation measures set forth in the
20 table, but in addition may include other appropriate mitigation techniques which would meet
21 the objectives thereof.

Table 1. Table of Standards for the Protection of Natural Features

Allowable Use Categories	Low-Density Residential Passive Recreation	High-Density Residential Medium-Density Residential Active Recreation	Minor Commercial Neighborhood Commercial Community Commercial Highway Commercial Regional Commercial Postsecondary Minor Office Major Office Office Park Community Services	Heavy Industrial Heavy Infrastructure Light Infrastructure Minor-Light Industrial Light Industrial Park Interchange Commercial Involves use of regulated hazardous materials**
Natural Features				
Waterbodies	Conservation Easement to O.H.W. line plus 50' naturally vegetated buffer			Conservation Easement to O.H.W. plus 50' x setback factor*
Watercourses /Tributaries**	Conservation Easement to O.H.W. plus 10' x setback factor	Conservation Easement to 25 year flood elev. plus 20' x setback factor	Conservation Easement to 25 year flood elev. plus 30' x setback factor	Conservation Easement to 25 year flood elev. plus 50' x setback factor
	Conservation Easement to O.H.W. line plus a 50' naturally vegetated buffer for all tributaries as defined in Section 10-1			
Wetlands	Conservation Easement to jurisdictional line plus 40' 20' x setback factor*	Conservation Easement to jurisdictional line plus 20' x setback factor*	Conservation Easement to jurisdictional line plus 30' x setback factor*	Conservation Easement to jurisdictional line plus 50' x setback factor*
Floodplain	Drainage Easement to 100 year post-development Floodplain elevation / Conservation Easement to 100 year floodplain if additional natural features are present			
Native Forest**	Conservation Easement to boundary determined during the NFI plus a 20' buffer - Management Plan approved by local, state, and federal agencies			
High Quality Successional Forest**	Conservation Easement to boundary determined during the NFI- Management Plan approved by local, state, and federal agencies. If entire site is comprised of HQSF, then the site may be developed at 4,000 square feet of disturbance per two acres, not to exceed 20% of the parcel			
Severe Slopes	Conservation Easement for all areas			
Significant Slopes	Conservation Easement for 50% of grade area			
Closed Basins	Retention of 100 year Post-Development Volume Increase/ soil tests to verify percolation			
Site with special concern, threatened and endangered species	Protection and management plan required (approved by local, state and federal resource management agencies)			
Areas of Environmental Significance	Conservation Easement to uppermost contiguous slope break plus a 35' foot setback			Conservation easement to uppermost contiguous slope break plus a 50' setback
Archaeological or Historical Sites Cultural Resources	Recommendation of the Division of Historic Resources Protection plan is required if significant cultural resources are present as set forth in section 10-194			

* Setback factor: Buffer width as given X slope factor X soil factor. Where slope factor= 1+average gradient in % and soil factor= clay x 2 and sand x 1 (i.e. the required buffer for an apartment complex with a 5% slope on clay soils: $20 \times 1.05 \times 2=42$)

** See Section 10-1 for definitions

1
2 **Sec. 10-346(a)(3)** no changes
3

4 **Sec. 10-346(b)** no changes
5

6 (Ord. No. 92-3, § 1(7-61), 1-28-92; Ord. No. 95-14, § 24, 9-12-95; Ord. No. 00-45, § 3, 11-14-00; Ord. No.
7 01-09, § 3, 4-10-01)
8
9

10 **Section 5. Conflicts**
11

12 All ordinances or parts of ordinances in conflict with the provisions of the Ordinance are hereby repealed
13 to the extent of such conflict, as of the effective date of this Ordinance, except to the extent of any conflicts
14 with the Tallahassee-Leon County Comprehensive Plan, as amended, which provisions shall prevail over any
15 parts of this Ordinance which are inconsistent, either in whole or in part, with the Comprehensive Plan.
16

17
18 **Section 6. Severability**
19

20 If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid
21 or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct
22 and independent provision and, such holding shall not affect the validity of the remaining portions of this
23 Ordinance.
24

25
26 **Section 7. Effective Date**
27

28 This ordinance shall take effect on January 1, 2004.
29

30 DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this
31 ____ day of _____, 2003.
32

33
34 LEON COUNTY, FLORIDA
35

36 BY: _____
37 JANE G. SAULS, CHAIRMAN
38 BOARD OF COUNTY COMMISSIONERS
39

40
41 ATTEST:
42 BOB INZER, CLERK OF THE COURT
43 LEON COUNTY, FLORIDA
44

45 APPROVED AS TO FORM:
46 LEON COUNTY ATTORNEY'S OFFICE

BY: _____

BY: _____
HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY